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SIPDIS

SENSITIVE

DEPARTMENT FOR LCID, WHA/EPSC, AND WHA/CAN

E.O. 12958: N/A

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SUBJECT: NAFTA CHAPTER 11: METHANEX -- THE IMPORTANCE IS THE CHILL

1. (U) A NAFTA Chapter 11 tribunal on June 10 dismissed Methanex Corporation's claim against the U.S. on both jurisdictional grounds and on the merits, ordering Methanex to pay the State Department \$3 million in legal fees and to pay the tribunal \$1 million in costs. (Note: this is more than had been requested by the USG. End note.)

2. (SBU) Canadian press cites a trade analyst saying that the "importance of this decision is the chill," a position echoed by Foreign Affairs Canada. FAC, which had just received a copy of the decision, called it "great for the United States," noting that the case was so flimsy a loss would have been catastrophic.

US: One down, more to go

3. (U) Methanex now joins Mondev, ADF and Loewen as one of the cases in which claims under NAFTA Chapter 1 against the USG were dismissed by tribunals. However, the list of cases is growing, with three softwood lumber claimants and several cases recently filed in response to the ban on imports of beef from Canada.

Canada: One active case

4. (SBU) UPS is the sole U.S. firm with an active case pending against the GOC, and a hearing is scheduled in Washington, DC on December 12, 2005. There are four additional cases for which notice has been received of intent to file but the GOC does not consider them to be active and agreed that the Methanex result will force claimants with marginal cases to think twice before pressing a frivolous claim that could result in hefty legal fees.

5. (SBU) Comment: This ruling should go far to lay to rest concerns that the NAFTA Chapter 11 dispute settlement process would cripple governments' ability to protect the environment. Rather than causing a chill on environmental regulation, it serves notice that firms should consider carefully before challenging such regulations. End Comment

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